

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

Roy and Josie Fisher, et al.,
Plaintiffs,
v.
United States of America,
Plaintiff-Intervenor,
v.
Anita Lohr, et al.,
Defendants,
and
Sidney L. Sutton, et al.,
Defendants-Intervenors,

Maria Mendoza, et al.,
Plaintiffs,
United States of America,
Plaintiff-Intervenor,
v.
Tucson Unified School District No. One, et al.,
Defendants.

CV 74-90 TUC DCB
(lead case)

ORDER

CV 74-204 TUC DCB
(consolidated case)

1 The Boundary Review Process: USP § II.D, E and X.E.3

2 On April 26, 2013, the Court approved boundary changes related to school closures
3 which occurred in 2013. The Court acted on limited information, but the District assured
4 “the Court it was moving forward under the USP with a comprehensive review of
5 boundaries, clustering or pairing schools and otherwise examining boundaries; . . .” (Order
6 (Doc. 1468) at 4.) At the time, the Plaintiffs Fisher objected to the boundary changes
7 because TUSD failed to make the requisite boundary change assessment, pursuant to the USP
8 § II.D: Attendance Boundaries, Feeder Patterns, and Pairing and Clustering.

9 1. All schools in the District shall have an attendance boundary unless the
10 District has specifically designated a school to have no attendance
boundary.

11 2. The District shall review and/or redraw its attendance boundaries when
12 it opens a new school; closes, repurposes or consolidates a school; alters the
13 capacity of a school; or designates a school without an attendance
14 boundary. The Parties anticipate that such changes may result in the
15 redrawing of some attendance boundaries. When the District draws
16 attendance boundaries, it shall consider the following criteria: (i) current
17 and projected enrollment; (ii) capacity; (iii) compactness of the attendance
18 area; (iv) physical barriers; (v) demographics (i.e., race, ethnicity, growth
19 projections, socioeconomic status); and (vi) effects on school integration.
In applying these criteria, the District shall propose and evaluate various
scenarios with, at minimum, the Plaintiffs and the Special Master in an
effort to increase the integration of its schools.

18 3. By April 1, 2013, the District shall review its current attendance
19 boundaries and feeder patterns and, as appropriate, amend such boundaries
and patterns and/or provide for the pairing and/or clustering of schools to
promote integration of the affected schools.

20 As is evident from today’s date, the April 1, 2013, deadline proscribed in the USP
21 has been extended, with TUSD submitting the Boundary Review Process to the Plaintiffs
22 in summary fashion for consideration on September 16, 2013, with the detailed plan
23 following on February 27, 2014. On March 6, 2014, the Fisher Plaintiffs requested an R&R,
24 which in spite of further revisions the Fisher Plaintiffs continued to press and the Special
25 Master filed the R&Rb on May 27, 2014.

1 The Implementation Addendum, filed by TUSD on June 20, 2014, (Doc. 1627) at
 2 9), reflects that Final Approval is scheduled for June 2, 2014, which coincides with the June
 3 date proposed in § VI, General Timeline, for Final Board Approval of TUSD's proposed
 4 Boundary Review Process. (R&R (1601), Ex. A (Doc. 1613): (TUSD Boundary Review
 5 Process.) Because Board approval is not required for the process, the Court understands the
 6 June 2, 2014, deadline to be the date for Board Approval of actual boundary changes. It
 7 appears that this date is past; in its Objection to the R&R the District reports that the
 8 Boundary Review Process is well under way. (Objection (Doc. 1614) at 1 n.2.) The
 9 Boundary Review Process also serves to inform the magnet plan mandated pursuant to USP
 10 § II.E.3,¹ but the Boundary Review Process § VI, General Timeline, does not reflect
 11 deadlines which must be met for the Boundary Review Process to serve this purpose.

12 The Court adopts in part the recommendation of the Special Master to approve the
 13 Boundary Review Process, but rejects the Special Master's recommendation to direct the
 14 parties to meet to attempt to settle disputed language in the Boundary Review Process and
 15 to stipulate to procedures for the exchange of by TUSD to Plaintiffs. The Court adopts the
 16 Boundary Review Process, as proposed by TUSD and attached, here, including Governing
 17 Board Policies JR and JC-R.² TUSD shall re-file the approved Boundary Review Process,
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19 ¹The District shall develop . . . a Magnet School Plan . . . ensuring that this Plan aligns
 20 with [the District's] other student assignment strategies . . . The District shall at a minimum:
 21 (I) consider how, whether, and where to add new sites to replicate successful programs
 22 and/or add new magnet themes and additional dual language programs, focusing on which
 23 geographic area(s) of the District are best suited for new programs to assist the District in
 24 meeting its desegregation obligations. . . (iv) determine if each magnet school or school with
 25 a magnet program shall have an attendance boundary . . . The Magnet School Plan shall, at
 26 a minimum, set forth a process and schedule to: (viii) make changes to the theme(s),
 27 programs, boundaries, and admissions criteria for existing magnet schools and programs. .
 28 .." USP § II.E.

²The Court refers to the Boundary Review Process as reflected in the document filed
 by TUSD on May 27, 2014. (Doc. 1613-1), attached here.

1 with an updated timeline for any now past benchmark dates and deadlines relevant for
2 coordinating the boundary review process with development of the magnet plan. The Court
3 addresses the procedures for Plaintiffs to request information and TUSD to respond.

4 Fisher Objections: Special Master Recommendations

5 First, the Fisher Plaintiffs object that the Boundary Committee, established to assist
6 TUSD in developing the boundary plan, is comprised of 24 members, 16 of whom are
7 District employees. There is an Advisory Team as well, which is also comprised of District
8 employees plus external consultants. The Fisher Plaintiffs are concerned that parents and
9 community stakeholders have inadequate representation in the boundary review process. The
10 Special Master notes that these committees are not components of the USP, but that the
11 Boundary Committee should be comprised of between 15-25 members whose racial
12 composition generally reflects the racial composition of the population living in TUSD. The
13 Court agrees that even if the Boundary Committee is not required by the USP, its
14 composition should be consistent with the goals of the USP provisions applicable to
15 reviewing and redrawing TUSD's attendance boundaries, II.D.2 and .3. The Special
16 Master's recommendations would be one way to ensure such consistency.

17 The Boundary Review Process, Governing Board Policy JC-R, suggests the same
18 by its criteria that members of the Boundary Committee be one or more of the following: a
19 TUSD parent; represent a reasonable mix of the diversity and ethnicity of the affected
20 communities; be a staff member of a school in the potentially affected area, or be an
21 interested member of the community. (JC-R at 2.) The purpose of the Governing Board's
22 policy is to provide a process for boundary changes that includes notification and
23 involvement of stakeholders to improve decisions and create support for boundary changes.
24 (JC-R at 1.) Given the expressed goal by the TUSD Governing Board that parents and
25 community stakeholders will have adequate representation in the boundary review process.
26 The Court leaves it to TUSD to ensure that it applies the committee criteria adopted by the

1 Board in JC-R to accomplish a reasonable mix of diversity and ethnicity of the affected
2 communities on the Boundary Committee and to ensure that the Boundary Committee is
3 distinguishable by its emphasis on stakeholder members from the Advisory Team
4 Committee, which is comprised of TUSD staff and external professional members. Plaintiffs
5 may bring any perceived failure in this regard to the Court's attention should future redress
6 become necessary.

7 Second, as they did when TUSD proposed boundary changes in response to 2013
8 school closures, the Fisher Plaintiffs complain that Governing Board Policy JC-R, School
9 Attendance Boundaries for the Planning and Student Assignment Department, does not
10 satisfy the USP criteria specified in § II.D.2, which are as follows: (i) current and projected
11 enrollment; (ii) capacity; (iii) compactness of the attendance area; (iv) physical barriers; (v)
12 demographics (i.e., race, ethnicity, growth projections, socioeconomic status); and (vi)
13 effects on school integration. And in applying these criteria, JC-R fails to require the District
14 to propose and evaluate various scenarios with, at minimum, the Plaintiffs and the Special
15 Master in an effort to increase the integration of its schools. The Special Master proposes the
16 parties be given an opportunity to reconcile the language used in JC-R with the criteria
17 specified in the USP.

18 The Court has reviewed the language and finds it fully complies with the criteria in
19 the USP. Subsequent to the Court's approval of the 2013 school-closure boundary changes,
20 on February 5, 2014, the Board revised JC-R. The Policy JC-R does not include "growth
21 projections," but it includes current and projected enrollment and current and projected
22 development patterns and the other "examples" of demographics expressly included in the
23 USP: race, ethnicity, and socioeconomic status. The District's policy requires TUSD to
24 consider its boundaries' effects on school desegregation whereas the USP calls for
25 consideration of various scenarios' efforts to increase integration. (R&R (Doc. 1601, Ex. A
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1 (Doc. 1613): Boundary Review Process.) In the context of the JC-R, the Court finds no
2 distinction between the USP goal of desegregation and the District's goal of integration.

3 The USP requires TUSD to "propose and evaluate various scenarios with, at
4 minimum, the Plaintiffs and the Special Master in an effort to increase the integration of its
5 schools." USP § II.D.2. The Boundary Review Process "includes multiple opportunities for
6 the Plaintiffs and Special Master to receive and comment on information as the District
7 develops scenarios (rather than waiting to involve them after scenarios have already been
8 developed) and to be involved in the evaluation of options before recommendations are
9 presented to the Board." (R&R (Doc. 1601), Ex. A (Doc. 1613): Boundary Review Process
10 § IV.) Additionally, the usual review and comment provisions apply after the District makes
11 recommendations to the Board and again after the Board approves any recommendations.
12 *Id.*

13 Based on the Boundary Review Process, approved as attached here, TUSD has
14 clarified the involvement by the Special Master and Plaintiffs with the Advisory Team as
15 early as March as the Team develops and evaluates potential options, including various
16 desegregation scenarios. *Id.* § IV. The Court finds there is no need for the parties to meet and
17 stipulate to clarification of the terms "options" and "scenarios." To the extent the Plaintiffs
18 challenge TUSD's addition of criteria not specified in the USP, TUSD added student
19 transportation, a *Green* factor, and fiscal impacts, which are relevant to determine whether
20 boundary changes are being made to the extent practicable to address integration. The Court
21 finds no merit to the Fisher Plaintiffs' assertion that the Boundary Review Process criteria
22 are out of sync with the USP.

23 Third, the Fisher Plaintiffs challenge the District's policy allowing students who
24 have been moved because of school closings to remain in their new school if the boundaries
25 of that school are changed again. As this Court previously noted: "School policies must yield
26 to the Constitution where they stand to impede or otherwise limit the implementation of the
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1 USP.” (Order (Doc. 1468) at 5.) Plaintiffs make no such showing. The Court directs the
2 District to include the further movement of this protected group of students as one possible
3 scenario in its Boundary Review Process. At this time, the Court is persuaded by the Special
4 Master’s report that the effect of the policy to not move students a second time “seems
5 relatively small and does not outweigh the potential educational costs to students reassigned
6 for a second time over two years.” (R&R (Doc. 1601) at 7.) As the Special Master noted,
7 this Court’s decision in April, 2013, considered the educational hazard of forced student
8 mobility. The Court makes the same consideration, now. But if the integration scenarios
9 reflect a second move is so advantageous to integration as to offset the negative educational
10 costs to students of a second move, then TUSD should reconsider the policy against moving
11 these students a second time.

12 Finally, the Fisher Plaintiffs assert the District has impeded their ability to contribute
13 to the development of the boundary plan by not providing information in a timely fashion or
14 providing incomplete information. On the other hand, the Special Master recognizes that
15 “the development by the District of requested information can be time and resource
16 consuming so that the review and comment processes get extended.” (R&R (Doc 1601) at
17 6.) The Special Master notes that communication, especially obtaining timely information
18 from TUSD, is a continuing problem, which this Court previously instructed him to address
19 with the parties to improve the review processes required by USP § X.E.3. (Order (Doc.
20 1476), filed June 7, 2013, at 2-3). The Special Master recommends that the Court require
21 the parties to work together to reach an agreement for “more effective and efficient ways to
22 provide the plaintiffs with information that would result in less contentious and better
23 informed collaboration.” *Id.* at 9.

24 The Court afforded the parties such an opportunity a year ago. The Court agrees that
25 procedures should be clarified for better more efficient and effective communications
26 between the parties. The USP provides for the “Plaintiffs to request additional information
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1 from the District should any Plaintiff determine that such additional information is necessary
2 to assess whether the District is complying in good faith with its desegregation obligations
3 and the terms of [the USP].” Plaintiffs must make such requests no more than seven (7) days
4 after the provision of items pursuant to I(D)(1), which requires input and review by the
5 Plaintiffs before TUSD puts into practice or use any new or amended plans, policies,
6 procedures or other significant change required by the USP. Plaintiffs have no more than
7 thirty (30) days after the provision of the District’s Annual Report to request additional
8 information. USP § X.E.3.

9 Pursuant to § X.E.3, the Plaintiffs make a request for information to the Director of
10 Desegregation with copies to the Special Master and all Parties. Should the District believe
11 that any request is unduly burdensome or otherwise inappropriate, the Special Master shall
12 determine the feasibility of the request and the time for compliance. Such determinations of
13 the Special Master may be appealed to the Court, pursuant to the terms of the January 2012
14 Order.³ *Id.* The Special Master reports that the District has been unwilling to use this
15 provision, but has nevertheless refused to comply with requests for information. The Court
16 does not read the USP to require some formalized request from the District to trigger the
17 Special Master’s responsibility to decide whether a request for information is relevant or
18 unduly burdensome and the time for compliance.

19 The Court has three concerns: 1) prompt and full disclosure should be made by
20 TUSD to ensure effective review and comments by Plaintiffs; 2) TUSD’s responsibility to
21 timely respond to requests for information should not be unduly burdensome so as to impede
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23 ³This Court has previously explained that the time-frames established in the January
24 2012 Appointment Order for judicial review of the Special Master’s Initial Report and
25 proposed USP, which at the time of the Appointment Order were tasks delegated to the
26 Special Master to draft, and the Special Master’s Final Report of Unitary Status are not
27 applicable to procedures for judicial review of R&Rs related to Action Plans and
Implementation Plans, which are to be considered on an expedited basis, pursuant to the USP
§ I.D.1.

1 the timely implementation of the USP, and 3) resolution related to requests for data or
2 information should be expedited so as to not bog down implementation of any USP plan,
3 policy, or other provision. Accordingly, the Court affirms the 7-day⁴ time frame established
4 in the USP for Plaintiffs to request information. In the future, all requests for information
5 shall be made through the Special Master to the Director of Desegregation, TUSD. The
6 Special Master shall in his discretion forward a request in its entirety or limit it for relevancy
7 or burdensomeness, and shall include a time for compliance. In the event, TUSD does not
8 timely comply with full disclosure, the Special Master shall first confer with the Director of
9 Desegregation to attempt to resolve the dispute, and if unsuccessfully resolved then file a
10 Motion to Compel the disclosure of information with the Court. All such disputes shall be
11 resolved by the Court on an expedited bases as is this Court's general practice for addressing
12 discovery disputes between parties so as to not delay the progress of a case.

13 Given the directive above, the Court finds that the Special Master's recommendation
14 is moot in respect to the parties meeting and engaging in discussions to stipulate to
15 procedures for requesting and responding to requests for information. The Court notes that
16 in the Special Master's First Annual Report on the Status of Progress in Implementing the
17 Unitary Status Plan for the Tucson Unified School District, the Special Master made only one
18 recommendation: "that the Court direct the parties to work with the Special Master to
19 develop a stipulation addressing this problem." (First Annual Report (Doc. 1641) at 7.)

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26 ⁴The Court affirms the 30-days time frame to request information after the District
27 tenders its Annual Reports.

1 Given the directive above related to procedures for review and comment, pursuant to USP
2 § X.E.3, the Court finds the recommendation in the First Annual Report is moot.

3 **Accordingly,**

4 **IT IS ORDERED** that the R&R (Doc. 1601) is adopted in part in respect to the
5 recommendation to approve the Boundary Review Process, as attached. The R&R is MOOT
6 in all other parts.

7 **IT IS FURTHER ORDERED** that within 7 days of the filing date of this Order,
8 TUSD shall file the Approved Boundary Review Process, with an updated § VI, General
9 Timeline, for any now past deadlines and to identify deadlines relevant to coordinating the
10 boundary review process with development of the magnet plan.

11 **IT IS FURTHER ORDERED** that, pursuant to the USP § X.E.3, any Plaintiff may
12 make a request for information to TUSD, with copies to the Special Master and all Parties,
13 and, thereafter, the Special Master shall transmit the request to the Director of Desegregation,
14 in its entirety or at the discretion of the Special Master the request may be limited for
15 relevancy or burdensomeness, and shall include a time for compliance. In the event, TUSD
16 does not timely comply with full disclosure, the Special Master shall first confer with the
17 Director of Desegregation to resolve the dispute, and then, if necessary, file a Motion to
18 Compel the disclosure of information with the Court. All such disputes shall be resolved by
19 the Court on an expedited bases so as to not delay the progress of the case.

20 **IT IS FURTHER ORDERED** that the parties are not precluded from stipulating
21 to further details necessary to implement the procedures set forth, here, for requesting and
22 responding to requests for information.

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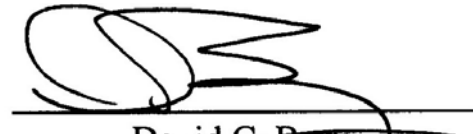
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1 **IT IS FURTHER ORDERED** that the recommendation in the Special Master's
2 First Annual Report on the Status of Progress in Implementing the Unitary Status Plan for
3 the Tucson Unified School District (Doc. 1641) is MOOT.

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5 DATED this 27th day of August, 2014.

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11 David C. Bury
12 United States District Judge
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